Supreme Court, U.S.
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No. 00-1861

In The

Supreme Court of the United States

MEMPHIS HOUSING AUTHORITY,

Petitioner,

v.

TARA THOMPSON,

Respondent.

On Petition For A Writ Of Certiorari To The Supreme Court Of Tennessee

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether public housing lease language required by 42 U.S.C. § 1437d(1)(6) authorizes the eviction of a tenant for the drug-related criminal activity of a guest if the tenant has no knowledge of or ability to prevent such activity.

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STATEMENT OF THE CASE

Tara Thompson ("Thompson"), the Respondent in this cause, lives in public housing with her three minor children. She has lived in Memphis Housing Authority's Fowler Homes development ("Fowler Homes") since April of 1996. From April of 1996 until October of 1997, she lived with her mother, who is a tenant in Fowler Homes. Thompson executed a Dwelling Lease with the Memphis Housing Authority ("MHA"), the Petitioner, on October 17, 1997 for 904 Latham, # 76 and soon thereafter moved into her own apartment. The lease signed by Thompson contained an Addendum which makes drug-related criminal activity "by the resident, any member of the household, a guest, or other person under the resident's control . . . " grounds for termination of the lease.

The youngest of Thompson's children was born in January of 1998, after she moved to her new apartment in Fowler Homes. The father of her youngest child is Tallen Williams ("Williams"), whom Thompson met in the Fowler Homes development some time in 1996. Apparently Williams and/or two of his brothers lived in Fowler Homes at some point during the period from September of 1991 until April of 1996, and Williams continued to be on the grounds of Fowler Homes frequently through February of 1998. Williams and Thompson had never lived together and saw each other only occasionally. He was not on the lease for 904 Latham, # 76.

Williams had been arrested for possession of marijuana on the grounds of Fowler Homes in December of 1997. Although Thompson visited Williams in jail, she did

not know he had been arrested on a drug charge. Williams had apparently misled Thompson about the reason he was in jail.

On or about February 6, 1998, Thompson was preparing to do laundry when she saw Williams on the grounds of Fowler Homes with some friends. She asked him to watch the baby while she went to the complex laundromat. Williams agreed and came to her apartment.

During the time that Williams was in the apartment, police officers came to the door to execute a search warrant. They seized a substance which proved to be approximately 0.4 grams of cocaine. Williams was arrested and later pleaded guilty to possession of a controlled substance; however, Thompson was not charged or accused of any culpability in the incident. MHA has stipulated that Thompson had no direct knowledge of Williams' illegal drug activity prior to February 6, 1998. She had no actual knowledge that he had illegal drugs in his possession on February 6, 1998.

Nonetheless, on or about February 13, 1998, Thompson received a Three Day Notice Of Termination Of Lease citing the criminal conduct of "[a]n individual, who identified himself as living with resident. . . . " When she did not vacate her apartment pursuant to the lease termination notice, a Forcible Entry and Detainer action was commenced in the Shelby County General Sessions Court. After a hearing, the general sessions court granted a judgment for "possession only" to MHA on April 22, 1998.

On May 1, 1998, Thompson perfected an appeal to the Circuit Court of Shelby County for the Thirtieth Judicial Circuit at Memphis. MHA moved for summary judgment, but the court denied the motion while rejecting the argument of "strict liability" for the acts of guests or household members of public housing tenants and finding that at a minimum, an innocent and unknowing tenant's ignorance of the activity would have to arise out of "indifference or lack of precaution" on his or her part to justify lease termination. MHA App. at 97a-98a. Subsequently, MHA filed a renewed motion for summary judgment in which MHA argued that there had been some fault on Thompson's part in that she had not made reasonable inquiry into the reasons for Williams' prior jailing. The court granted summary judgment to MHA. MHA App. at 81a.

Thompson filed a timely appeal to the Tennessee Court of Appeals, Western Section on December 7, 1998, arguing that the trial court erred in granting summary judgment, because she neither had prior knowledge of Williams' drug use, nor could she control his conduct. The court of appeals affirmed the trial court. MHA App. at 78a.

Thompson next filed an application with the Tennessee Supreme Court for permission to appeal the appellate court's decision on the issue of whether MHA's lease provisions imposed strict liability on the lease holder for the drug-related criminal activities of guests or other people under the tenant's control. The supreme court granted Thompson's application, reversed the appellate court's decision, and remanded the case to trial court for

reconsideration of MHA's motion for summary judgment. *Memphis Housing Authority v. Thompson,* 38 S.W.3d 504 (Tenn. 2001); MHA App. at 43a. The supreme court held that eviction is only proper if the tenant "knew or should have known of the drug-related criminal activity 'of a guest or other person' and failed to take reasonable steps to prevent or halt it." MHA App. at 41a.

REASONS FOR DENYING THE WRIT

There is no compelling reason under Supreme Court Rule 10 for the Court to grant Memphis Housing Authority's petition for writ of certiorari. The petitioner contends that the Tennessee Supreme Court has decided an important federal question in a way that conflicts with the Ninth Circuit Court of Appeals' decision in *Rucker v. Davis,* 237 F.3d 1113 (9th Cir. 2001) and that there exists a conflict between state courts of last resort regarding the proper interpretation of public housing lease language required by 42 U.S.C. § 1437d(l)(6). Neither of these assertions is meritorious. Moreover, the decision from which review is sought is not a final disposition of the case on the merits and there are no extraordinary circumstances that would require the Court to grant certiorari at this stage of the proceedings.

I. THERE IS NO CONFLICT BETWEEN THE 9TH CIRCUIT'S DECISION IN *RUCKER* AND THE DECISION OF THE TENNESSEE SUPREME COURT REGARDING THE EVICTION OF PUBLIC HOUSING TENANTS FOR THE DRUG-RELATED CONDUCT OF GUESTS

In *Rucker*, tenants of the Oakland Housing Authority brought a federal lawsuit under the Administrative Procedures Act seeking injunctive and declaratory relief to prevent their eviction for the criminal acts of others. In affirming the trial court's issuance of a preliminary injunction to stop the housing authority from evicting tenants for off-premises drug-related activity, the *Rucker* court held:

> [I]f a tenant has taken reasonable steps to prevent criminal drug activity from occurring, but, for a lack of knowledge or other reason, could not realistically exercise control over the conduct of a household member or guest, § 1437d(l)(6) does not authorize the eviction of such a tenant.

Id. at 1135.

The statute referenced above is found in the Cranston-Gonzales National Affordable Housing Act of 1990. This legislation required all public housing agencies to include in their leases the following provision:

> any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants or any drug-related criminal activity on or near such premises, engaged in by a public housing tenant, any member of the tenant's household, or any guest

> or other person under the tenant's control, shall be cause for termination of tenancy.

42 U.S.C. § 1437d(l)(6). The scope of this statute was broadened further by a 1996 amendment which replaced the phrase "on or near such premises," with the phrase "on or off such premises." *See* Pub. L. 104-20 § 9(a); 42 U.S.C. § 1437d(l)(6).

In the instant case, Memphis Housing Authority brought an eviction action against Tara Thompson because of the drug-related arrest of a guest at her apartment. In reversing the trial court's award of summary judgment to the housing authority, the court in *Memphis Housing Authority v. Thompson* held:

> [N]either federal law nor the lease provisions impose a standard of strict liability for the drug-related criminal activities of Thompson's guests or other persons under her control. The phrase 'under the resident's control' permits eviction only if MHA establishes that Thompson knew or should have known of the drug-related criminal activity 'of a guest or other person' and failed to take reasonable steps to prevent or halt it.

MHA App. at 41a.

The holdings in *Thompson* and *Rucker* are remarkably similar in that both interpret lease language required by 42 U.S.C. § 1437d(l)(6) to permit eviction of a tenant for the illegal drug activity on the part of a guest or other under the tenant's control only if [s]he had knowledge of it or failed to take reasonable steps to prevent or stop it.

Clearly, there is no conflict between the *holdings* of the Tennessee Supreme Court and the Ninth Circuit

Court of Appeals; however, Memphis Housing Authority seizes onto dicta by the *Thompson* court to find conflict with the *Rucker* decision. In analyzing the lease provisions mandated by 42 U.S.C § 1437d(l)(6), the *Thompson* court observed that "both the language of the lease, and the federal statute from which it is derived, clearly impose strict liability upon the resident or household members for engaging in drug related criminal activity. . . . " MHA App. at 37a-38a. The *Rucker* court did not differentiate between household members and guests, as did the Tennessee Supreme Court.

It is a settled principle of Tennessee law that court decisions must be read with special reference to questions involved and necessary to be decided, and language used which is not decisive of the case is not binding as precedent. *See Rush v. Chattanooga Du Pont Employees' Credit Union,* 358 S.W.2d 333 (Tenn. 1962); *Bomar v. State ex rel. Boyd,* 312 S.W.2d 174, 178 (Tenn. 1958) (holding that "[o]biter dictum does not control the decision in a subsequent suit when the point which was obiter dictum is, in a subsequent case, presented for decision"); *Shepard Fleets, Inc. v. Opryland, U.S.A.,* 759 S.W.2d 914, 921-22 (Tenn. Ct. App. 1988); *Vinson v. Nashville, Chattanooga & St. Louis Ry.,* 321 S.W.2d 841, 845 (Tenn. Ct. App. 1958) (holding that "[i]t is a familiar principle that a case is authority for the point decided, and nothing more, and that general expressions in an opinion are to be limited to the case with which the court was dealing"). While the Tennessee court suggests that it would apply a different standard than that used in *Rucker* for evictions based upon the drug-related conduct of a household member, that suggestion is not binding precedent, and a rule of

law on the point would only come from a case involving an eviction based upon the acts of a household member. Moreover, there is some ambiguity in the *Thompson* court's statement on the point. In stating that the provisions of the lease language in question "clearly impose strict liability upon the resident *or household members* for engaging in drug-related criminal activity," it is unclear whether the court contemplated eviction of the entire household or only the guilty household member. MHA App. at 38a (emphasis added). Until the Tennessee court entertains a case involving eviction for the acts of a household member, it is speculative to presume that there would be a conflict with the decision in *Rucker.*

The holding in *Thompson* is consistent with that of *Rucker* and the language in the Court's opinion that differs from the holding in *Rucker* has no precedential effect. This case does not present a legitimate conflict between a state court of last resort and a United States Circuit Court of Appeals.

II. THIS CASE PRESENTS NO CONFLICT BETWEEN STATE COURTS OF LAST RESORT REGARDING THE EVICTION OF PUBLIC HOUSING TENANTS FOR THE DRUG-RELATED CONDUCT OF GUESTS

The petitioner relies on the decision of the Minnesota Supreme Court in *Minneapolis v. Lor,* 591 N.W.2d 700 (Minn. 1999) in support of its assertion that there is a conflict between state courts of last resort on an important federal question. This reliance is misplaced for two reasons.

The *Lor* case involved the eviction of a public housing tenant for the criminal activity of the tenant's son, who was a member of her household. The instant case involves the eviction of a public housing tenant for the drug-related criminal activity of a guest. Consequently, comparing the two cases is like comparing apples to oranges. This is especially true since the *Thompson* court has suggested, in dicta, that it would apply a different standard in a case involving a member of the tenant's household.

Moreover, in *Lor,* the issue before the Minnesota court was whether the trial court could properly consider equitable factors as a defense to eviction proceedings. Although related, this is a distinct issue from that raised in the *Thompson* case. The interpretation of lease language required by 42 U.S.C. § 1437d(l)(6) (which was the issue addressed in *Thompson* and *Rucker*) goes to the legal basis for eviction. The issue addressed by the *Lor* court was whether the trial court, or only the housing authority, had the discretion to consider whether to proceed with eviction when the grounds to evict existed.

Department of Housing and Urban Development regulations provide that a public housing authority has the discretion to consider all the circumstances of a case in deciding whether to evict for criminal conduct, including the seriousness of the offense, the extent of participation by family members, and the effect that the eviction would have on other family members who were not involved in the criminal activity. 24 C.F.R. § 966.4(1)(5)(vii)(B).

The discretion referenced here presupposes that there is a legal basis for eviction. Whether the housing authority should or should not proceed with an eviction because, for example, of the hardship it would cause on an innocent tenant is a different issue from whether a material violation of a lease provision has occurred. The trial judge in *Lor* apparently denied the eviction based upon unspecified equitable principles and did not address whether there had been a material breach of the lease. The basis of the Minnesota court's ruling was that the consideration of equitable factors was left to the discretion of the housing authority. This power was conferred by federal regulation. This rationale is distinguishable from the case at bar and undermines the assertion that a genuine conflict exists between the Tennessee and Minnesota courts of last resort.

The petitioner cites decisions from various other state appellate courts in support of its argument that there is a conflict between jurisdictions which this Court needs to resolve; however, none of the cited cases are from state courts of last resort as contemplated by Rule 10(b) of the Rules of the Supreme Court. Petition, pp. 14-15.

III. THE PETITION FOR WRIT OF CERTIORARI IS PREMATURE IN THAT THE DECISION OF THE TENNESSEE SUPREME COURT IS NOT A FINAL DISPOSITION OF THE CASE ON THE MERITS

The *Thompson* case was before the Tennessee Supreme Court upon appeal of the trial judge's issuance of summary judgment. The court reversed the decision of the Court of Appeals and remanded the case to the trial

court for reconsideration of the petitioner's motion for summary judgment. This court has repeatedly held that "except in extraordinary cases, the writ [of certiorari] is not issued until final decree." *Hamilton-Brown Show Co. v. Wolf Brothers and Co.*, 240 U.S. 251, 258 (1916).

In denying certiorari from a ruling of the United States Court of Appeals for the District of Columbia Circuit in *Brotherhood of Locomotive Firemen and Enginemen v. Bangor & Aroostook Railroad Co.*, 389 U.S. 327 (1967), this Court found that "because the Court of Appeals remanded the case, it is not yet ripe for review by this Court". *Id.* at 328. The *Thompson* case is in an identical posture and there are no extraordinary circumstances which would justify departure from the general rule that writs of certiorari are not granted until a final decree.

IV. PETITIONER'S CLAIM OF ERROR DOES NOT SUPPORT ISSUANCE OF A WRIT OF CERTIORARI

The petitioner devotes a great deal of its petition to quarreling with the merits of the *Thompson* decision; however, even if it were correct this would not constitute a compelling reason for this Court to accept review. While the respondent strongly disagrees with the petitioner's arguments regarding the proper interpretation of the lease language required by 42 U.S.C. § 1437d(l)(6), the correctness of the lower court's decision is of limited relevance in this Court's determination of the petition for certiorari. *See Watt v. Alaska*, 451 U.S. 259, 275 (1981) (J. Stevens, concurring) (holding that "this Court does not sit primarily to correct what we perceive to be mistakes

by other tribunals"); *Ross v. Moffitt*, 417 U.S. 600, 616-617 (1974) (holding that "this Court's review is discretionary and depends on numerous factors other than the perceived correctness of the judgment we are asked to review").

While it is tempting to engage in a debate of the merits of the *Thompson* decision with the petitioner, it would not assist this Court in its contemplation of whether there exists a compelling reason to accept review.

CONCLUSION

For the foregoing reasons, the respondent respectfully requests that the Court deny the Petition for a Writ of Certiorari.

Respectfully submitted,

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